UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

LOCAL 58, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (IBEW), AFL–CIO (PARAMOUNT INDUSTRIES, INC.),

and **Case No. 07–CB–149555**

RYAN GREENE, an Individual

Counsel:

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DECISION

DAVID I. GOLDMAN, ADMINISTRATIVE LAW JUDGE. In this case a union adopted a membership policy that provides that members who want to resign membership or revoke a dues-checkoff authorization are to resign or revoke in writing, in person, and show identification. The policy also states that if any member feels that appearing in person poses an undue hardship, he or she may contact the union hall and make other arrangements to verify identify.

The government contends that the maintenance of this policy violates Section 8(b)(1)(A) of the National Labor Relations Act (Act) on its face, without regard to motive, enforcement, application, or any record evidence that an employee's failure to comply with the policy has consequences of any kind. No issue is presented, and therefore I do not reach the issue, of whether the policy is enforceable or valid—in other words, whether or not the policy could serve as a defense in a case alleging unlawful action by the union against an employee who had attempted to resign or revoke in a manner inconsistent with the policy. However, as to the issue alleged, I find that the mere maintenance of this policy, on its face, does not abridge Section 8(b)(1)(A). Accordingly, I dismiss the complaint.

STATEMENT OF THE CASE

On April 6, 2015, Ryan Greene filed an unfair labor practice charge alleging violations of the Act by the International Brotherhood of Electrical Workers Local Union No. 58, AFL–CIO (Union or Respondent) docketed by Region 7 of the National Labor Relations Board (Board) as Case 07–CB–149555. Based on an investigation into this charge, on June 12, 2015, the Board's General Counsel, by the Regional Director for Region 07 of the Board, issued an order consolidating this case with a related case and issued a consolidated complaint and notice of hearing alleging that the Union had violated the Act. On June 24, 2015, the Union filed an answer and affirmative and other defenses denying all alleged violations of the Act. On July 23, 2015, the General Counsel, by the Regional Director, issued an order severing the instant case from the related case with which it had been consolidated, approved withdrawal of the related case, and withdrew certain allegations from the consolidated complaint.

A trial was conducted in this matter on July 30, 2015, in Detroit, Michigan. Counsel for the General Counsel, the Union, and the Charging Party, filed post-trial briefs in support of their positions by September 14, 2015.[1] On the entire record, I make the following findings, conclusions of law, and recommendations.

JURISDICTION

Paramount Industries, Inc. (Paramount) is, and at all material times has been, a corporation with an office and place of business in Croswell, Michigan, engaged in the manufacture, non-retail sale, and distribution of lighting equipment. In conducting its operations during the calendar year ending December 31, 2014, Paramount sold and shipped from its Croswell, Michigan facility goods valued in excess of $50,000 directly to points outside the State of Michigan. At all material times, the Employer has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. At all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act. At all material times, the Union has been the exclusive collective-bargaining representative, based on Section 9(a) of the Act, of a bargaining unit composed of the following employees of Paramount: all employees described in Exhibit A of the collective-bargaining agreement between the Union and Paramount effective May 14, 2014, through May 13, 2017; but excluding supervisor and guards as defined by the Act. Based on the foregoing, I find that this dispute affects commerce and that the Board has jurisdiction of this case, pursuant to Section 10(a) of the Act.

UNFAIR LABOR PRACTICES

On October 1, 2014, the Union announced implementation of a policy resolving that any member desiring to opt out of membership or dues deduction must do so in person, at the union hall, showing picture identification and supplying a written request indicating the members' intent. The policy also resolves that that any member who feels that appearing in person at the union hall poses an undue hardship may contact the union hall and make other arrangements to verify identity. This policy, titled "policy regarding procedure for opting out of membership rights, benefits, and obligations," states:

[1]The Respondent filed a post-trial motion to strike portions of the Charging Party's brief. The Charging Party responded with a motion to strike the Respondent's motion to strike, to which the Respondent filed a response. These motions are denied. In reaching the decision and recommended order in this case, I have not considered matters outside the record and have not relied upon any filings of the parties that could be construed as "reply" briefs.

IBEW Local 58 has implemented the following policy:

WHEREAS members have the ability to opt out of membership in the Union and applicable dues deduction agreements consistent with the requirements of applicable agreements *or* authorizations and relevant state and federal laws.

WHEREAS the loss of membership or financial contribution in IBEW Local 58 results In the loss of substantial rights of members and access to member-only benefits. The loss of such rights and benefits have an adverse effect on our members.

WHEREAS IBEW Local 58 has had experiences in the past where members have lost their membership through fraudulently submitted paperwork that has created a hardship on the victim of the fraud.

IT IS HEREBY RESOLVED that any member that desires to opt out of membership or dues deduction must do so in person at the Union Hall of IBEW Local 58 and show picture identification with a corresponding written request specifically indicating the intent of the member.

IT IS FURTHER RESOLVED that any member that feels that appearing in person at the Union Hall of IBEW Local 58 poses an undue hardship may make other arrangements that verify the identification of the member by contacting the Union Hall.

IT IS FURTHER RESOLVED that any other requirements In any other agreement, authorization or notices of IBEW Local 58 or the International Union of IBEW remain in place.

Analysis

The complaint alleges that the Union's maintenance of the policy is violative of Section 8(b)(1)(A) of the Act. At trial, counsel for the government made clear that the theory of violation is limited to the claim that mere maintenance of the policy "is unlawful on its face" (Tr. 10, 22) because a union cannot prescribe any "particular method to" resign or cancel dues check off. (Tr. 10, 22, 24–25.) In confirmation of this position, the General Counsel's case at trial involved no witness, and, in addition to the formal papers, the introduction of one exhibit into evidence: a copy of the policy. The General Counsel then rested.

As discussed below, I conclude that the General Counsel's contention has no support in Board precedent. The General Counsel's claim that a union's adoption of "any" rule designating a method for resignation violates the Act on its face is without merit. While some union resignation rules that are squarely invalid and unenforceable have been found to violate Section 8(b)(1)(A) on their face, this has never been the case with a rule, such as this one, that is limited to the designation of facially noncoercive procedures for effectuating the resignation/revocation. Whether or not this union policy could serve as a defense in a case alleging unlawful action against an employee who had attempted to resign or revoke in a manner inconsistent with the policy, the mere maintenance of *this* policy does not, on its face, amount to restraint or coercion prohibited by Section 8(b)(1)(A).

1. The policy's procedures for resignation from the Union

Section 8(b)(1)(A) provides that it is an unfair labor practice for a labor organization:

> to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7 [section 157 of this title]: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein[.]

The Supreme Court has rejected a "literal reading" of 8(b)(1)(A) that would find that that the mere fact that a union acts in response to the exercise of a Section 7 right constitutes "restraint" or "coercion" within the meaning of 8(b)(1)(A). *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 178 (1967). In particular, unions are afforded wide latitude in promulgating rules governing their internal union affairs. *Allis-Chalmers*, supra at 195 (in enacting Section 8(b)(1)(A) "Congress did not propose any limitations with respect to the internal affairs of unions, aside from barring enforcement of a union's internal regulations to affect a member's employment status"). Notably, the Supreme Court recognized in *Allis-Chalmers*, 388 U.S. at 190–191, that any parallel to the Section 8(a)(1) prohibition on an employer's restraint and coercion of employees in the exercise of Section 7 rights,

> clearly is inapplicable to the relationship of a union member to his own union. Union membership allows the member a part in choosing the very course of action to which he refuses to adhere, but he has of course no role in employer conduct, and nonunion employees have no voice in the affairs of the union.

Unlike with a union's membership rule, the threat to employment is always implicit in any employer regulation of employee conduct. Thus, as the Supreme Court has explained, "[t]he Board has long held that § 8(b)(1)(A)'s legislative history requires a narrow construction which nevertheless proscribes unacceptable methods of union coercion, such as physical violence to induce employees to join the union or to join in a strike." *Scofield v. NLRB*, 394 U.S. 423, 428 fn. 4 (1969). The Board's approach to 8(b)(1)(A) "emphasizes the sanction imposed rather than the rule itself and does not involve the Board in judging the fairness or wisdom of particular union rules." *Scofield*, 394 U.S. at 429. This is because the policing of internal union rules places the Board unnaturally in the midst of the union's internal relationship with its members, each of whom has voluntarily chosen to be a member of the union.

Notwithstanding this the Board and the Supreme Court have recognized that restrictions on resignation are at odds with the premise of voluntary unionism that is a fundamental policy of the Act.[2]

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[2]As the Supreme Court recognized in *Pattern Makers' League v. NLRB*, 473 U.S. 95 (1985), the wide latitude provided a union to control its internal affairs to some extent rests on the ability of employees to freely resign from the union and escape union discipline. As the Court put it: "We believe that the inconsistency between union restrictions on the right to resign and the policy of voluntary unionism supports the Board's conclusion that [a union rule prohibiting resignations during a labor dispute] is invalid." *Pattern Makers'*, 473 U.S. at 105. See also, *Scofield*, 394 U.S. at 423 ("Section 8(b)(1)(A) leaves a union free to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against members *who are free to leave the union and escape the rule*") (emphasis added).

In *Machinists Local 1327 (Dalmo Victor)*, 263 NLRB 984, 985 (1982), enf'd. denied 725 F.2d 1212 (9th Cir. 1984), the concurrence (Chairman Van de Water and Member Hunter) concluded that "we would find any restriction imposed upon a union member's right to resign to be unreasonable and, therefore, we would find the imposition of any fines or other discipline premised upon such restrictions to be violative of Section 8(b)(1)(A)." 263 NLRB at 988.

In *Machinists, Local Lodge 1414 (Neufeld Porsche-Audi, Inc.)*, 270 NLRB 1330 (1984), the Board adopted the views expressed by the concurrence in *Dalmo Victor*. In *Neufeld Porsche* the issue presented was whether a union violated 8(b)(1)(A) by imposing a fine against an employee after he resigned his membership in the union. 270 NLRB at 1330. The international union's constitution provided that it was improper conduct for a member to accept work at a struck (or locked out) facility, and that resignations tendered during the time, or 14 days before, a primary picket line was maintained were not effective as resignations. Four months into a strike, a striking employee, Locki, personally delivered a letter of resignation to the union's offices, and a few days later returned to work. Internal union charges were filed against Locki for violating the constitution by returning to work during the strike, and a fine imposed against him.

The Board in *Neufeld Porsche*, expressly adopting the view of the concurrence in *Dalmo Victor*, concluded that any "restriction a union may impose on resignation, is invalid, and that the Respondent violated Section 8(b)(1)(A) by imposing a fine against Locki pursuant to the [union constitution]." 270 NLRB at 1331. This was true notwithstanding the union's legitimate interests in membership rules that restrict resignations to maintain strike solidarity and to protect the interests of striking employees, as a rule restricting resignation "substantially impairs fundamental policies embedded in labor laws." Id. at 1333. "For regardless of their legitimacy, the union's interests simply cannot negate or otherwise overcome fundamental Section 7 rights." Id. at 1334.

In *Pattern Makers' League v. NLRB*, 473 U.S. 95 (1985), the Supreme Court approved of the Board's position in *Neufeld Porsche*. The Court in *Pattern Makers'* considered a union's fining of ten members who attempted to resign and returned to work during a strike in violation of the union's internal rule that resignations would not be accepted during a strike or lockout (or when one appeared imminent). The Court decided the question of "whether a union is precluded from fining employees who have attempted to resign when resignations are prohibited by the union's constitution." 473 U.S. at 101. The Court endorsed the Board's view in *Neufeld Porsche* that rules "restricting" union members' resignations were unenforceable against employees and no defense to union 8(b)(1)(A) liability for fining or otherwise disciplining employees who had sought to resign.[3]

Since *Neufeld* and *Pattern Makers'*, union rules that restrict resignation have been unequivocally understood to be unenforceable by the union, and it is a violation of 8(b)(1)(A) to impose fines or discipline premised upon such resignation restrictions. However, the narrowed scope of the interpretation accorded the terms "restraint" and "coercion" under 8(b)(1)(A) (*Allis-Chalmers*, 388 U.S. at 178, 190-191; *Scofield*, 394 U.S. at 428 fn. 4), and the attendant emphasis on "the sanction imposed rather than the rule itself [that] does not involve the Board in judging the fairness or wisdom of particular union rules" *Scofield*, 394 U.S. at 429), remains a part of the statutory scheme.

[3]Notably, however, the Board decision upheld by the Supreme Court in *Pattern Makers'*, rejected as "inappropriate" the claim that the union's unenforceable constitutional provision on resignation be expunged. *Pattern Makers' League (Rockford Beloit),* 265 NLRB 1332, 1333 fn. 7 (1982), enf'd. 724 F.2d 57 (7th Cir. 1983), aff'd. 473 U.S. 95 (1985).

Thus, only where the rule on its face squarely abridges resignation in a manner that has unequivocally been found to be unlawful to enforce, will the Board find a violation of 8(b)(1)(A) based on maintenance of the rule. Indeed, one must note that the concept of a facial "maintenance" violation of 8(b)(1)(A)—unrelated to enforcement or application—was unheard of before the mid-1980s and its rationale has never been fully explicated.[4]

Be that as it may, it is clear that "the legal principle that maintaining restrictions on the right of a union member to resign from membership is unlawful has been firmly settled for several years." *Int'l Union of Operating Engineers, Local 399 (Tribune Properties)*, 304 NLRB 439 (1991). While the dramatic departure from prior case law has never been explained, the Board has found the maintenance of blatantly unenforceable union rules to be not only invalid as a defense to unlawful union efforts to fine or discipline employees who sought to resign, but independently unlawful in their own right.[5]

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[4]*Engineers & Scientists Guild (Lockheed California)*, 268 NLRB 311 (1983), is often cited as the first case where the Board found that the maintenance of an invalid rule restricting resignation violated the Act. In fact, in *Lockheed*, the Board agreed with the ALJ that union violated the Act by enforcing its unreasonable constitutional provision restricting resignations through imposition of fines on employees who had resigned from the union and crossed a picket line. As a remedy, the Board ordered expungement of the constitutional resignation provision, finding that "the mere maintenance of such a constitutional provision restrains and coerces employees, who may be unaware of the provision's unenforceability, from exercising their Section 7 rights." Id. at 311. Notwithstanding this, the Board did not hold the provision unlawful (and did not amend the judge's conclusion of law which did not include a finding that the provisions were unlawful). *Lockheed* is not a case in which the mere maintenance of an unreasonable internal rule violated the Act in the absence of unlawful enforcement.

The cited basis in many cases for the "facial" violation of 8(b)(1)(A) is often (if it is anything) the Board's decision in *Neufeld.* However, in *Neufeld* both "[t]he issue presented" and the holding concerned whether "the Respondent violated Section 8(b)(1)(A) by imposing a fine against [an employee] for conduct that occurred after Locki resigned his membership in the Respondent." In neither *Neufeld* nor the Supreme Court's *Pattern Makers* decision was a facial "maintenance" violation alleged or found. Thus, while it is true that after *Neufeld* and *Pattern Makers'* a union may not restrict the right of its members to resign, in those cases to "restrict" an employee from resigning meant more than merely maintaining a rule. *Neufeld*, supra at 1336 ("a union may not lawfully resign from membership. Accordingly, we find the Respondent violated Section 8(b)(1)(A) by imposing a fine on [employee] Locki for returning to work during the strike after he resigned his membership in the Respondent Union").

[5]See e.g., *Typographical Union (Register Publishing)*, 270 NLRB 1386 (1984) (adopting judge's finding that maintenance of resignation provision allowing resignation only with consent of union violated 8(b)(1)(A)); *Sheet Metal Workers, Local 73 (Safe Air Inc.)*, 274 NLRB 374 (1985) (mere maintenance of union rule unlawful where it provided that no resignation would be accepted if offered in anticipation of or during pendency of charges lodged against member or during strike/lockout), enf'd. 840 F.2d 501 (7th Cir. 1988); *Teamsters Local 995 (Caesars Palace)*, 285 NLRB 828 (1987) (union unlawfully adopted and abided by resignation rules requiring 30-day notice; no resignation permitted unless all charges against member concluded and all financial obligations to union satisfied; union has right to delay until end of strike resignations tendered within 15 days of or during strike); *Birmingham Printing Pressmen's Local*, 300 NLRB 7 (1990) (union unlawfully maintained "in force and effect" provision limiting resignation to members in good standing); *Birmingham Printing Pressmen's Local No. 55*, 300 NLRB 1 (1990) (same); *UAW, Local 148 (Douglas Aircraft Co.)*, 296 NLRB 970 (1989) (union unlawfully maintained rule permitting resignation only if member was in good standing, not in

Extant Board precedent recognizes a purely facial violation of 8(b)(1)(A) based on the maintenance of an internal union membership provisions that on their face prohibit resignation at certain times, or requirement payment of fines, dues, or levies, or purport to permit continued union control over employees who have resigned. These cases involve union resignation provisions that violate the principle that, consistent with our system of voluntary unionism, resignation must always be available to members so they are free to choose immunity from union discipline. But none of these cases provide grounds to stretch the reach of 8(b)(1)(A) to unprecedented lengths and find unlawful the maintenance of a union policy, such as that here, that merely prescribes a manner and procedure for resignation or revocation.

And stretching the reach of Section 8(b)(1)(A) to unprecedented lengths is precisely what the General Counsel is engaged in here, although he does not admit it.

As noted, the General Counsel advances a theory of a mere maintenance violation, because it is all there is. There is no evidence of application. There is no evidence that the Respondent has, in fact, restricted anyone from resigning.[6] Indeed, it is unproven on the record what the effect of this "policy" is internally within the union. Does it even constitute a provision of the union's constitution, bylaws, or rules which a member may be penalized for ignoring? See, R. Exh. 1 at Art. XXV. There is no evidence as to whether, even within the union, this "policy" provides any basis for action against a member.[7]

And this brings us to the central question: does this union policy "restrict" resignation on its face?

It does not, in any way that the term has ever been understood heretofore.

The Respondent's policy affirms that "members have the ability to opt out of membership in the Union and applicable dues agreements," and sets forth three procedures for resignation/ revocation that the General Counsel condemns: the member must appear at the union hall, provide picture identification, and a written request. However, the policy also states that the personal appearance of the member is not required if, in the member's judgment, it poses an undue hardship to appear in person:

> any member that feels that appearing in person at the Union Hall of IBEW Local 58 poses an undue hardship may make other arrangements that verify the identification of the member by contacting the union hall.

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arrears or delinquent in payments to union, and no internal charges filed; union rule also unlawful because resignation only good if mailed 10 days prior to end of fiscal year); *Professional Ass'n of Golf Officials*, 317 NLRB 774 (1995) (unlawful maintenance of rule where it barred resignation of members not in good standing).

[6]The Union put on evidence about the one instance in which an employee has resigned since inception of the policy, and he mailed in a resignation—first to the employer, which forwarded it to the Union—and then a union business representative called the employee and verified the employee's identify over the phone. The resignation was accepted.

[7]Surely, even the General Counsel would agree that if there is no basis for enforcing the policy through union discipline or control over an employee who has resigned, its maintenance is not a violation of Sec. 8(b)(1)(A). This fundamental premise is unproven on this record.

Thus, the policy provides, on its face, that any member who "feels" that appearing in person is an undue hardship may make other arrangements—other than appearing in person—to verify identify.

As far as I can find, and as far as the parties have pointed out, there is *no* case in which the mere unlawful maintenance of a rule has been found (or even alleged) where the rule does not restrict resignation by barring it in a significant and substantive way: e.g., by prohibiting or rendering resignation ineffective during certain times, or barring resignation when certain external events (i.e. strikes) are occurring, or by requiring union consent or payment of union-imposed fees or fines as a condition of resignation. *Every* case in which the maintenance of a rule has been found unlawful involves a rule that restricts the right to resign by directly barring resignation in designated circumstances, or threatening post-resignation action against the employee, or by prohibiting resignation without submitting to union approval or financial levies. What these cases have in common is that they offend the Act's principle of voluntary unionism because they involve a union rule that at certain times and in various ways, prohibit a member the freedom to choose immunity from union discipline through resignation.

There is simply *no* case where the restrictions on resignation in a rule alleged to be unlawful to maintain involve only procedures such as identification, putting the resignation in writing, or showing up to resign (and here, this last procedure does not apply if in the judgment of the member it poses an undue hardship). It is unprecedented to say that any of these conditions, *on their face* restrict anyone from resigning, or stop anyone from choosing immunity from union discipline.

Of course it is possible that the application or enforcement of such rules against a member might operate to create a restriction on resignation—but that is not this case.

The General Counsel obfuscates the unprecedented nature of its allegations here by repeated out-of-context and inapposite references to cases in which the Board has stated that "an employee may communicate his resignation from membership in any feasible way and no particular form or method is required so long as he clearly indicates that he no longer wishes to remain a member." It is this standard on which the General Counsel's case rests—essentially advancing the unprecedented contention that the maintenance of *any rule* prescribing a method of resignation is unlawful.

But the cases upon which the General Counsel relies are plainly inapposite. They are cases—in every case—that involve allegations of 8(b)(1)(A) violations where the union has (1) acted against an employee to obstruct resignation and (2) where there is *no rule* prescribing the manner of resignation. In other words, the cases advancing the General Counsel's proposition are not cases alleging an unlawful maintenance of a rule—they are cases where there is *no rule* and yet still the union refuses affirmatively to accept an employees' proffered resignation and takes action against the member. Thus, the gravamen of the General Counsel's argument rests on appeal to precedent that simply has nothing to say about what kind of rule a union can maintain (without evidence of application or enforcement) without running afoul of 8(b)(1)(A).

What is more, the standard which the General Counsel urges comes from cases that *expressly* limit the application of that standard to instances where there is no union rule governing resignations. Thus, the General Counsel cites *Electrical Workers IBEW (Houston Lighting & Power Co.)*, 280 NLRB 1362, 1363 (1986), a case where the union fined 10 employees who returned to work during a strike after telexing resignations to the union. The union did not accept the resignations. The administrative law judge, in reasoning adopted by the Board, made the statement, that "so long as the desire to resign is clearly communicated. . . . Such communication

may be made in any feasible way and no particular form or method is required." However, the judge specifically noted that there was no contention by the union "that the Union Constitution and By-Laws provided for an exclusive method of resignation." 280 NLRB at 1363. This case found that the union violated 8(b)(1)(A) by fining the employees, but did not involve an allegation that the union unlawfully maintained a rule, indeed, there was no rule for the Board to consider.

Notably, the administrative law judge in *Houston Lighting & Power* based the proposition that a member could resign "in any feasible way" on citation to an earlier case, *IBEW Local Union No. 66 (Houston Lighting & Power)*, 262 NLRB 483 (1982). There, the Board held that the union violated Section 8(b)(1)(A) (and 8(b)(2)) when the union, after refusing to accept a member's resignation and revocation of checkoff authorization, attempted to cause the employer to violate section 8(a)(3) by deducting dues from the employee's pay.

In that case, the Board noted that *"it is well settled that where neither a union's constitution nor bylaws provides specific restraints on resignation, a* member may resign from the union at will so long as the desire to resign is clearly communicated" (emphasis added). While the General Counsel cites and relies extensively (GC Br. at 4–5) upon *Local Union No. 66 (Houston Lighting and Power)*, he neglects to make reference to the portion of the citation I have emphasized here, omitting it from his quotation to the case. Thus, for the unsupportable proposition that a union may not adopt a rule that prescribes any procedures for resignation, the General Counsel cites a case in which the Board expressly limited its view that an employee could resign in any manner to those cases where the union had not adopted a rule prescribing the manner of resignation. In short, these cases suggest the opposite of what the General Counsel relies upon them for, and, in any event, are inapposite because they do not involve an allegation of unlawful maintenance of a resignation rule.

The General Counsel also cites *Local 80 Sales, Service & Allied Workers' Union (Capitol-Husting Co., Inc.*), 235 NLRB 1264, 1265 (1978), for a similar proposition. In *Capitol-Husting*, Board found that a union violated 8(b)(1)(A) by refusing the request of a member to resign (he had initiated a successful deauthorization drive) on grounds that the member was in arrears and not a member in good standing, and his dues continued to be checked off notwithstanding his request to the employer to revoke dues checkoff. The Board found the union's conduct violative of the Act, but in this case too, the Board couched an employee's right to resign in any manner he or she chooses as applicable to situations where there is no rule on resignations:

> Where neither a union's constitution or bylaws provide specific restraints on resignation. . . a union member may resign at will . . . [and] may communicate his resignation from membership in any feasible way and no particular form or method is required.

Id. at 1265.

As in the other cases cited by the General Counsel, in this case too, the Board suggests—expressly—that the union's inability to impose procedures for resignation are a consequence of there being no union rule in effect. In any event, the case is inapposite because it has nothing to do with the allegedly unlawful maintenance of a rule restricting resignation, which is all that is at issue in the instant case.

The General Counsel also goes so far as to assert that "[t]he Board does not require resignations be in writing" (GC Br. at 4), a pronouncement that may be intended to suggest an answer to, but, in fact, does not treat with the question of whether a union violates the Act if it maintains a rule requiring that resignations be in writing. More to the point, none of the cases

cited by the General Counsel on this point suggest, in any way, that the maintenance of a rule requiring that resignations be in writing is unlawful.

Thus, while the General Counsel cites (GC Br. at 4) *Communication Workers of America, AFL–CIO Local 1127 (New York Telephone Co.)*, 208 NLRB 258, 262–263 (1974), in that case the Board rejected the contention that a union could deem oral resignation ineffective *where the union had no requirement for written resignations.* 208 NLRB at 262–263:

> Neither Respondent [local union] in its bylaws, not its parent [union] in its constitution, has any provision respecting resignation from membership [but] nevertheless contends that an oral resignation is ineffective . . . . . Both in *NLRB v. Granite State Joint Board*, 409 U.S. 213 (1972); and *Machinists Lodge 405 v. NLRB, supra*, the Supreme Court rejected attempts by the unions involved therein to impose on their members restrictions on their right to resign which did not appear in their constitutions and bylaws, or which their members either had no knowledge of, or had not consented to.

The General Counsel also cites *Sheet Metal Workers Local 18 (Rohde Bros.)*, 298 NLRB 50, 52 (1990) for the proposition that written resignations may not be required. However, the General Counsel misreads the case. In *Rohde Bros.*, the Board *did not* find a maintenance violation on grounds that the union's rule required that resignations be in writing. To the contrary, in *Rohde Bros.* the General Counsel "conced[ed] that such provision is not 'facially invalid.'" 298 NLRB at 53. Even more telling, the General Counsel in *Rohde Bros.* made this concession in a case where it argued successfully that *other* portions of the union's rule were invalid on their face and unlawful to maintain. Thus, the General Counsel argued, and the Board, appropriately found in *Rohde Bros.*, that it was unlawful for the union to maintain rules allowing only a member "in good standing who has paid all dues and financial obligations" to submit a resignation and that provided that "[n]o resignation shall be accepted if offered in anticipation of charges being preferred against him, during the pendency [sic] of any such charges or during a strike or lockout." 298 NLRB 51–52. This is familiar grounds for finding a violation. See, *Sheet Metal Workers, Local 73 (Safe Air Inc.)*, supra. But it has nothing to do with the case at bar. Thus, in *Rohde Bros.* the General Counsel could have argued, and the Board could have found, that, as argued here, the written resignation requirement constituted grounds for finding a "maintenance violation." However, to the contrary, the General Counsel in *Rohde Bros.* openly conceded it did not. *Rohde Bros.* is not precedent that supports the General Counsel's case here. At the least, it suggests the opposite of the General Counsel's argument.

In considering just how far afield the General Counsel in this case proposes to move the 8(b)(1)(A) bar, it is not insignificant to point out that the concurrence in *Victor Dalmo*—i.e., the concurrence articulating the view expressly adopted by the Board in *Neufeld*, which in turn, was the view approved by the Supreme Court in *Pattern Makers'*—rejected the view that requiring that resignations be in writing was invalid, much less unlawful, as the General Counsel proposes here. The concurrence in *Victor Dalmo*, opined that "[a]ny union rule that restricts a member's right to resign is unreasonable and any discipline taken by a union against an employee predicated on such a rule violates Section 8(b)(1)(A)." 263 NLRB at 992. At the same time, the concurrence went out of its way to clarify that procedural requirements such as those requiring a resignation to be in writing were appropriate. They were not, in the view of the concurrence, "'restrictions' on resignation" at all, but "[r]ather, they are simply ministerial acts necessary to ensure that a member's resignation is voluntary and has, in fact occurred." 263 NLRB at 992–993 & fn. 52. See also, *UAW, Local 148 (Douglas Aircraft Co.)*, 296 NLRB 970 (1989) (agreeing that "the requirement that a member's resignation be in writing and sent to a designated officer of the local union could not reasonably be construed as restraining or coercing members in the exercise of

their Section 7 rights"); *Auto Workers, Local 449 v. NLRB*, 865 F.2d 791, 797 (6th Cir. 1989) ("Neither the ALJ nor the Board discussed the requirement that a member's resignation be in writing and sent to a designated officer of the local union. On its face, we can discern nothing in this requirement that could reasonably be construed as restraining or coercing members in the exercise of their § 7 rights"); *Telephone Traffic Union Local 212 (New York Telephone Co.)*, 278 NLRB 998 (1986) (Board declines to reach issue of whether union's "procedural requirements that resignation be submitted in writing to the secretary-treasurer by registered mail" were unlawful to maintain).

In short, none of the cases relied upon by the General Counsel condemns a rule prescribing a method for resignation of the type at issue here. As stated above, the policy at issue here does not, on its face, threaten, prohibit, or penalize members from resigning, or bar resignations at certain times, or render such resignations ineffective to avoid union sanction.

It would be a significant expansion of the scope of Section 8(b)(1)(A) to find a "maintenance" violation in these circumstances. But the General Counsel has offered no argument at all as to why I, or the Board, can or should expand union culpability in this manner. Indeed, by contending with such certainty that existing precedent warrants the result it seeks, the General Counsel has left itself without an argument as to why existing precedent should be expanded.

Again, at the risk repeating myself, I stress that I do not reach the issue—unalleged and unadvanced by the General Counsel—of whether the enforcement of the Union's policy against an employee to deny resignation would survive the Board's scrutiny. It may well not. But the mere maintenance of this policy does not violate the Act on its face, under existing Board precedent.[8]

2. The policy's procedures for revoking dues authorization

The General Counsel argues separately in its brief (GC Br. at 6–7) that maintenance of the policy violates the Act because it prescribes a process for revoking dues-checkoff authorization.

The problem with the General Counsel's case is essentially the same as with resignation. There is no record evidence of application of the policy. Thus, the General Counsel contends that the Union's policy on revocation is a facial "maintenance" violation. There is no precedent for

[8]The Charging Party makes the same mistake, citing numerous cases *not* involving a facial challenge to union resignation procedure requirements. See, e.g., *Local 128, UAW (Hobart Corp.)*, 283 NLRB 1175, 1177 (1987) (union violated 8(b)(1)(A) by not refusing to accept an employee's resignation and continuing to demand the employer deduct and remit dues, but the Board specifically found it unnecessary to "pass on the legality of the requirement that resignations be sent by registered mail."); *Local 54, Hotel & Restaurant Employees (Atlantis Casino Hotel)*, 291 NLRB 989, 990 (1988) (finding 8(b)(1)(A) violation for union to refuse to accept as resignation requests to be financial core members from, and later invoking disciplinary procedures against, employees because they returned to work during strike; no rule on resignation, not a "maintenance" case), enf'd. 887 F.2d 28 (3d Cir. 1989); *Local 441, IUE (Phelps Dodge)*, 281 NLRB 1008, 1012 (1986) (union violated 8(b)(1)(A) and (2) by rejecting member's resignation as untimely and subsequently attempting to have employer discharge; not a "maintenance" case); *Pattern & Model Makers Ass'n (Michigan Model Manufacturers Ass'n, Inc.)*, 310 NLRB 929 (1993) (Board ruled on effective date of mailed resignations for purpose of immunity from further union discipline; case did not concern maintenance of a union rule).

the Board to find an 8(b)(1)(A) violation under the circumstances presented for exactly the same reasons as in resignation cases. Dues authorizations agreements are an internal union matter that do not implicate Section 8(b)(1)(A) unless contrary to an overriding policy contained in national labor law. The Board has found revocability terms lawful so long as they did not "constitute such an impediment to an employee's freedom of revocation" as to effectively preclude them from revoking their dues assignments. See *Boston Gas Co.*, 130 NLRB 1230, 1231 (1961) (a contract clause requiring employee to give written notice of revocation to both the employer and their union was not so unduly burdensome as to effectively preclude employees' freedom of revocation). Given that, the mere maintenance of this policy's procedures for revocation cannot, on their face, violate Section 8(b)(1)(A).

Moreover, in comparison to resignation, the matter is complicated by the fact that it is relevant to the case law whether the procedures objected are at variance from the employee's agreement for dues checkoff, a matter to which the record in this case does not speak. See, *Newport News Shipbuilding & Dry Dock Co.*, 253 NLRB 721 (1980) (finding an 8(b)(1)(A) violation against union for "Maintaining or enforcing a provision in a collective-bargaining agreement which requires that employees use a particular form in order to revoke their dues-checkoff authorizations or requiring employees to appear in person at the union hall in order to revoke their dues-checkoff authorizations, *where these restrictions on revocation were not set forth in the dues-checkoff authorizations signed by the employees*") (emphasis added), enf'd. 663 F.2d 488 (4th Cir. 1981).

As with resignations, I stress that although I find no 8(b)(1)(A) violation under the circumstances presented, this does not mean that the Union's policy is valid and enforceable against employees seeking to revoke their dues-checkoff authorizations. That issue is not presented by this case and I do not reach it.

I dismiss the complaint.

CONCLUSIONS OF LAW

The Respondent did not violate the Act as alleged in the complaint. On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended[9]

ORDER

The complaint is dismissed.

Dated, Washington, D.C. October 26, 2015

David I. Goldman
U.S. Administrative Law Judge

[9]If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.